IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3451 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EVERGREEN ENTERPRISE - Petitioner(s)
Versus
JITENDRAKUMAR C KAPADI - Respondent(s)

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Appearance :
MR AK CLERK for Petitioner(s) : 1,
MR KR KOSHTI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/07/2007

ORAL JUDGMENT

1. Mr.A.K. Clerk, learned counsel for the petitioner and Mr.K.R. Koshti, learned counsel for the respondent.

2. On 29/3/2007, the matter was adjourned at the request of Mr.Koshti, learned counsel for the respondent, that the matter had come up for hearing suddenly and he could not get proper instructions, the matter be adjourned. The matter was thereafter taken up for hearing on number of dates, but for one reason or other it was adjourned. When the matter was taken up for hearing on the last occasion, Mr.Koshti, learned counsel for the respondent made a prayer for adjournment enabling him to seek further instructions in the matter and to controvert the allegations made by the petitioner that the workman was not ready and willing to resume the duty, but was interested in delaying the matter and was interested in getting the benefits under sec.17(B) of the Industrial Disputes Act, 1948. Mr.Koshti, learned counsel for the respondent prayed for time to seek further instructions.

3. When the matter was taken up for hearing today, Mr.Koshti, learned counsel for the respondent again prayed for time, but Mr.Clerk, learned counsel for the petitioner had opposed the adjournment submitting inter-alia that there is no good reason to adjourn the matter. As the adjournment is opposed, by Mr. Clerk, I refused adjournment.

4. The parties are heard.

5. After taking me through the evidence available on the records, Mr.Clerk, learned counsel for the petitioner submitted that the workman had left, rather, abandoned the services w.e.f. 1/12/1986 and thereafter, sent a notice that he was illegally removed. According to him, from Exh.8/1 it would clearly appear that the present petitioner asked the workman to resume the duty, but the workman did not. He also submitted that when the Reference was pending consideration, it was clearly stated before the Labour Court that the establishment was ready and willing to permit the workman to resume the duty. According to him, officers of the establishment also stated before the Court that they are ready to take the services of the workman. According to Mr.Clerk, despite the directions from the Labour Court, the workman did not report on the duty, therefore, the matter was brought to the notice of the Labour Court. According to him, an affidavit was filed before the Labour Court that they were ready and willing to allow the workman to resume the duty, but the affidavit was objected to on the ground that date and time were not given, therefore, it was not possible for the workman to join. That thereafter, the

establishment filed yet another affidavit giving date and time to the workman to join, but the workman did not join. He also submitted that after the final orders were passed by the Labour Court and the matter came to this Court, the establishment made an offer before this Court that they were ready and willing to allow the workman to resume the duty. Thereafter, the Court directed that the workman should accompany the Labour Officer and report on duty, however, the workman did not report on duty. He submits that from all these facts, it would clearly appear that the workman was gainfully employed with other Film Distributors and was not interested in resuming the duty with the petitioner for a small amount of Rs.500/600.

6. Mr.Koshti, learned counsel for the respondent, on the other hand, submitted that under false benevolence, the petitioner was directing the workman to join the duty, but whenever the workman went to resume the duty, he was not allowed to join. He, however, admits that when the matter was pending consideration before the Labour Court, the workman did not make any application or complaint to the Labour Court that the workman was not allowed to join the duty. In relation to the orders passed

by this Court, Mr.Koshti, learned counsel for the workman submitted that the Labour Officer accompanied the workman, the workman was allowed to resume the duty, but within half an hour, the workman was again thrown out. He, however, submits that this matter was again not brought to the notice of this Court, nor any certificate was obtained from the Labour Officer or from the establishment that on a particular date in presence of the Labour Officer, the workman had resumed the duty.

7. From the evidence available on the records and conduct exhibited by the workman, though it can be held that the workman had abandoned the work, but instead of entering into the exercise of appreciation of evidence, I must hold that the findings recorded by the learned court below in relation to illegal retrenchment should be set aside and the matter be remanded back to the Labour Court for its decision afresh in accordance with law.

8. I make it clear that observations made by me are in relation to this order only and any finding against the interest of the workman would not bind the trial court which shall be free to appreciate the evidence which was already brought on records and which under the orders of this Court may be brought on records. I am refraining

from making any observation in the matter, because, during the course of the arguments, Mr.Koshti, learned counsel for the respondent had submitted that the matter may be remanded to the Labour Court for a fresh decision.

9. The award made by the Labour Court is hereby quashed and set aside. The matter is remanded back to the Labour Court with a direction to the parties to appear before the said Labour Court on 30/8/2007. It shall be the duty of the petitioner to produce a copy of this judgement enabling the trial court to know that what it is required to do. After receiving the copy, the learned Labour Court shall ascertain from the parties that whether they wish to lead further evidence or not, and if, they say yes, then, appropriate opportunity to lead further evidence shall be given to the parties. After the parties close their right to lead evidence, the Court shall hear the parties and decide the matter in accordance with law. It is expected of the Labour Court that it shall conclude the hearing and deliver a final judgement within ten months from the date of appearance of the parties.

10. It is, however, to be noted that during the course of the arguments, Mr.Clerk, learned counsel for the petitioner

submitted that the petitioner is ready and willing to allow the workman to resume the duty, if the workman reports along with a copy of this order.

11. The workman is hereby directed to report on duty within a period of one week from today along with a certified copy of this order.

12. On workman's reporting, the petitioner establishment shall immediately allow him to resume the work.

13. If this time, the workman is not allowed to resume the duty, then, the workman would be entitled to approach the Labour Officer, who shall accompany the workman to the workplace of the petitioner establishment and require the petitioner establishment to allow the workman to resume the duty. If such occasion arises, then, the Labour Officer shall issue a certificate in favour of the workman that he had gone with the workman and asked the establishment to allow the workman to resume the duty. In case, the petitioner establishment does not allow the workman to resume the duty, then, the workman shall be entitled to make an application for drawing appropriate proceedings against the establishment in these proceedings.

14. If the establishment finds any difficulty with the

workman or with his work, then they would be entitled to report to this Court.

(R.S. GARG, J.)

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